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2012 IL App (3d) 110399-U

Order filed May 21, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
KAY R. LOHMEIER,	)	Tazewell County, Illinois
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-11-0399
and	)	Circuit No. 07-D-339
	)	
STEVEN J. LOHMEIER,	)	
	)	Honorable Jerelyn D. Maher,
Respondent-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion by increasing maintenance and requiring appellant to contribute to appellee's attorney fees.
- ¶ 2 Defendant-appellant, Steven J. Lohmeier, appeals the circuit court's increase of the

maintenance he is required to pay to plaintiff-appellee, Kay R. Lohmeier. Appellant argues that the trial court abused its discretion by failing to consider all of the required statutory factors, increasing the amount of maintenance he is required to pay, and ordering him to help pay appellee's attorney fees. Appellant fails to establish that the circuit court abused its discretion. We affirm.

¶ 3

### FACTS

¶ 4 The parties were married in 1978. While married they had three children. Appellee has a high school education and was a stay-at-home mother for the duration of the marriage. Appellant has a college education and worked throughout the marriage. In 2007, appellee sought dissolution of the marriage; the circuit court granted the dissolution on September 19, 2008. At the time of the dissolution, the parties had one minor child who was 16. The trial court ordered appellant to make monthly child support payments of \$963, plus 14.54% of any monthly gross income that exceeded \$6,620. The court also ordered appellant to pay indefinite maintenance of \$750 per month, plus 11.3% of any gross monthly income in excess of \$6,620. The order of dissolution stated that unless maintenance terminated for a statutory reason, "the Court shall conduct a review of [appellant's] maintenance obligation on or about May 1, 2010." The order further provided that said review would be pursuant to 750 ILCS 5/510.

¶ 5 Appellant's child support obligation ended on June 1, 2010. After that time, he made only the maintenance payments. On October 14, 2010, appellee filed a petition to increase

maintenance; she also filed a petition for contribution of attorney fees. Appellant filed a petition to terminate or reduce maintenance on November 19, 2010.

¶ 6 After hearings on the petitions, the trial court increased appellee's maintenance award. The court found that appellee's current employment was reasonable given her education and nearly 30 years of working in the home. It also found that it was reasonable for appellee to decide not to return to college in her fifties in hopes of improving her employment opportunities. The court ordered appellant to pay \$1,800 per month, plus 10% of any gross income that exceeded \$6,620 per month. The court also ordered appellant to pay \$3,600 of appellee's attorney fees. This appeal followed. Additional facts necessary to the analysis will be included below.

¶ 7 ANALYSIS

¶ 8 Appellant argues that the trial court abused its discretion by increasing the amount of maintenance and ordering him to contribute to appellee's attorney fees. He argues that the court abused its discretion by failing to consider the statutory factors listed in 750 ILCS 5/510 and by increasing the maintenance awarded to appellee. He argues that the court's decision to award attorney fees is an abuse of discretion for the same reasons he argues the award of maintenance is an abuse of discretion.

¶ 9 "The propriety of a maintenance award is within the discretion of the trial court and the court's decision will not be disturbed absent an abuse of discretion." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52 (2011). A trial court abuses its discretion when no reasonable

person would take the view adopted by the trial court. *Id.*

¶ 10 I. Award of Maintenance

¶ 11 A. 510 Factors

¶ 12 Section 510 of the Illinois Marriage and Dissolution of Marriage Act (the Act), 750 ILCS 5/101 *et seq.* (West 2010), requires that a court reviewing an order of maintenance “shall consider the applicable factors set forth in subsection (a) of Section 504 and the” factors in section 510(a-5) of the Act. 750 ILCS 5/510(a-5) (West 2010). The order of dissolution stated that unless the maintenance obligation terminated before May 1, 2010, the court would review maintenance on or about May 1, 2010, using the standard of review provided for in section 510.

¶ 13 Appellant argues that the following statement by the trial court shows that the trial court failed to consider the section 510 factors. The court said, “this is a review that was originally ordered in the judgment for dissolution of marriage. It is indefinite maintenance, and it is reviewable. It’s not a change in circumstance case. It’s reviewable, so the court will look at the 504 factors.” This statement does not indicate that the court would not consider section 510 factors. Instead, it shows that the court was familiar with the dissolution order, which stated that the review would be as provided in section 510. A review of the record removes any doubt that the trial court failed to consider the 510 factors. The court explicitly discussed appellee’s efforts to become self-supporting, the change in each party’s employment status, present and future earning capacity of the parties, changes in income of

the parties, and the property acquired by each party, each of which is a section 510 factor.

750 ILCS 5/510(a-5) (West 2010).

¶ 14 The record shows that the trial court did consider the section 510 factors in determining the maintenance award. The court did not abuse its discretion by failing to consider the relevant statutory factors.

¶ 15 B. Increase in Maintenance

¶ 16 Appellant argues that the trial court abused its discretion by nearly doubling the award of maintenance. He argues that the 5/510 factors cannot support such an increase in maintenance. This argument fails for multiple reasons. First, the court is required to consider more than just the 5/510 factors; it must consider the 5/504 factors as well; appellant ignores them. 750 ILCS 5/510(a-5) (West 2010). Second, even if we just look at the 5/510 factors, appellant's arguments fail to show an abuse of discretion. Third, he argues without supporting authority, that the termination of child support cannot be the basis for increasing maintenance.

¶ 17 The trial court was required to, and did, consider the factors in section 504 of the Act. Relevant section 504 factors discussed by the court include: “ (2) the needs of each party; \*\*\* (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage; (6) the standard of living established during the marriage; \*\*\* (8) the age and the physical and

emotional condition of both parties.” 750 ILCS 5/504(a) (West 2010).

¶ 18 Appellant, by focusing entirely on the 5/510 factors, cannot show that the court abused its discretion. As stated above, he must show that no reasonable person would take the view adopted by the trial court. Such a showing cannot be made by focusing just on the factors appellant would have preferred the court to consider; he must show how the factors he focuses on so overwhelmingly outweigh those used by the trial court that the trial court’s decision was unreasonable.

¶ 19 Even if we do as appellant and only focus on the 5/510 factors, appellant still fails to show an abuse of discretion. At the time of the dissolution, appellee worked two part-time jobs. Subsequently, one of those positions became full-time with benefits. Appellee quit the other part-time job to focus on the full-time position. The trial court found that this was reasonable. We find no abuse of discretion. Likewise, appellant argues that appellee should go back to school to improve her employment opportunities. We recognize that reasonable people could disagree on this issue, but an abuse of discretion occurs when no reasonable person would take the view adopted by the court, not when a different decision would also be reasonable. Appellant’s remaining arguments with respect to the 5/510 factors fail for similar reasons.

¶ 20 Finally, the crux of appellant’s argument is that the maintenance was increased in an amount almost equal to the amount of child support terminated. Appellant does not provide any evidence that the trial court simply chose to increase the maintenance in the amount of

child support that terminated. He also failed to cite to any case which holds that the termination of child support payments cannot result in an increase in maintenance.

¶ 21 The trial court found that appellant's gross income in the most recent year was around \$144,000 and that appellee's was around \$26,000. It determined that in light of the standard of living enjoyed by the parties prior to the dissolution, an increase in maintenance was required. The trial court did not abuse its discretion.

¶ 22 C. Contribution to Attorney Fees

¶ 23 A trial court's decision to award attorney fees in a dissolution case is a matter of discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214 (2009). Where one party lacks the financial resources and the other party does have the ability to pay, fees may be awarded; "financial inability exists where payment would strip the person of the means of her support and undermine her economic stability." *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967, 975 (1982).

¶ 24 Appellant argues that it was abuse of discretion to order him to contribute to appellee's attorney fees. His argument merely incorporates his argument with respect to the increase in maintenance, and reiterates four facts from that argument. We need not rehash his arguments. They fail here for the same reasons they failed above. He summarizes his argument this way: "To award her such a substantial contribution toward attorney fees only reinforces and condones her attitude and behavior in exerting no effort whatsoever to better

herself.” This is simply not an argument that appellee had the financial resources to pay her attorney fees, which is the *sine qua non* for denying contribution to another party’s attorney fees. The trial court did not abuse its discretion in ordering appellant to contribute to appellee’s attorney fees.

¶ 25

#### CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 27 Affirmed.